

REMARKS

The foregoing claim amendments primarily relate to obvious language issues. The amendment to claim 34 comes directly from claim 35. The new claims are supported, e.g., at pages 2 and 3, page 4, bottom and the top of page 7, as well as, e.g., examples D and E.

As the Examiner indicates, the claims recite, among other things, kits having at least two containers, each having a different composition of extracts of MHC molecules, the differences being spelled out in the claims; as well as to method claims requiring administration of doses of the two different extracts/MHC molecule compositions.

The Examiner relies on Bartorelli (one of whose inventors is the same as that of this application). However, Bartorelli is totally devoid of any suggestion of the administration of the two different kinds of extracts/MHC molecule compositions. Thus, as the Examiner acknowledges on page 4 of the Office Action, and as is clearly the case under strong Federal Circuit precedent, in order for the obviousness rejection to be tenable, the Examiner must show in the prior art motivation to modify the prior art in the way necessary to arrive at the claimed subject matter, in this case, to administer the two differentiated extracts/MHC molecules as recited in the claims. *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). The Examiner's allegation of such motivation is that: "One of skill would have been motivated to do so because the extraction of MHC molecules from different tissue sources (i.e., different goat or sheep) vary from source to source and would thus require the separation from extracts into easily distinguishable batches."

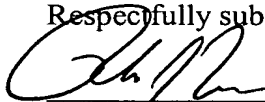
However, this puts the cart before the horse. What is necessary under the law is for the Examiner to demonstrate that a skilled worker first would be motivated to arrive at the idea of using the two different kinds of extracts/MHC compositions for, e.g., the medical treatments involved. Once a skilled worker has this concept, it may follow that one would need two containers to provide the two different doses, as the Examiner seems to allege. However, this still leaves missing from the rationale of the rejection evidence of the motivation to utilize the two different sources as recited in the claims of this application. In fact, there is no such

motivation in the cited reference. Rather, it is the inventor who has built on the work in the cited reference and has provided the invention as claimed here reciting the two different extracts/MCH composition feature.

The necessary underpinning for a legitimate rejection under 35 U.S.C §103 clearly being missing, the Examiner is urged to allow all claims.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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